

GUIDANCE NOTE:

NEW LAND FOR CLIMATE DISPLACED PERSONS IN BANGLADESH



DISPLACEMENT SOLUTIONS & YOUNG POWER IN SOCIAL ACTION

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DISPLACEMENT SOLUTIONS



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Executive Summary

Bangladesh is one of the countries most vulnerable to the effects of climate change. The regular and severe natural hazards that Bangladesh already suffers from - tropical cyclones, river erosion, landslides and drought - are all set to increase in intensity and frequency as a result of climate change. Sea level rise will increasingly inundate coastal land in Bangladesh. Dramatic coastal and river erosion will destroy lands and homes. These and the many other adverse effects of climate change will severely impact the economy and development of the country.

One of the most dramatic impacts will be the forced movement of people throughout Bangladesh as a result of losing their homes, lands, property and livelihoods to the effects of climate change. While it is impossible to predict completely accurate figures of how many people will be displaced by climate change, the best current estimates state that sea level rise alone will displace 18 million Bangladeshis within the next 40 years.¹ The vast majority of these people will be displaced within Bangladesh – not across international borders - presenting the Government with enormous challenges, particularly when it comes to finding places to live and work for those displaced.

Displacement Solutions (DS) and Young Power in Social Action (YPSA) have been engaged for several years on the issue of climate displacement in Bangladesh as part of the multi-faceted Bangladesh Housing, Land and Property Rights Initiative. The Initiative has undertaken a series of fact-finding missions to all corners of Bangladesh, in-depth research and analysis projects, and extensive engagement with government and non-government stakeholders, including climate displaced communities throughout the country. This work, combined with the efforts of Displacement Solutions to resolve climate displacement in other countries from Panama to Alaska to the Pacific Islands of Kiribati and Tuvalu, and beyond, has convincingly shown that land lies at the core of any approach to resolving climate displacement. Unless new land resources are designated for climate displaced persons in Bangladesh, the already crowded slums of big cities such as Dhaka and Chittagong will be the only place for them to go.

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¹ New York Times, *Borrowed Time on Disappearing Land Facing Rising Seas, Bangladesh Confronts the Consequences of Climate Change*, 28 March 2014, available at: http://www.nytimes.com/2014/03/29/world/asia/facing-rising-seas-bangladesh-confronts-the-consequences-of-climate-change.html?_r=0.

1. INTRODUCTION

While there are numerous challenges for all governments in addressing the problem of climate change displacement, identifying, acquiring and eventually allocating land to communities forced to flee their homes and lands will eventually become the most considerable and complex challenge that governments face. Given the anticipated tens of millions who will be affected, governments everywhere need to start planning now to ensure that they will be able to address these new challenges in the most effective manner possible.²

Unlike many countries that face the new challenges posed by climate displacement and which lack laws and policies to cope with the provision of new lands to those who have been displaced, Bangladesh already has a system in place to distribute state-owned land – known as “*Khas*” land – to landless people across the country. While the implementation of these laws and policies is far from perfect, with a number of key improvements, the distribution of state-owned or *Khas* land could form an important cornerstone of land-based solutions to climate displacement in Bangladesh.

This Guidance Note examines the current process of distributing state-owned land in Bangladesh under the *Khas* system, as well as under the “*Char* Development and Settlement Project”. It provides a step-by-step overview of how the distribution processes work in practice and identifies a number of shortcomings in each. Concrete recommendations for how these processes could be improved are also provided. The Note seeks to show that, if such improvements were put in place, the state-owned land distribution processes in Bangladesh could provide an important solution to finding new homes and land for those displaced by the effects of climate change.

A key aim of the Note is to highlight the fact that governments everywhere need to provide the right institutions, policies, laws and level of resources to address the housing, land and property (HLP) dimensions of climate displacement. In outlining the system that has already been established for the distribution of state-owned land in Bangladesh and identifying areas that require improvement, the Note also seeks to provide a useful example for other countries to consider, in terms of the kind of system that might be put in place to provide land solutions to climate displaced persons everywhere.

Another aim of the Note is to make recommendations to the Government of Bangladesh on the critical improvements which are required in the law, policy and implementation of the *Khas* land distribution system so that it might provide a more effective solution to finding new lands for climate displaced persons in the specific context of Bangladesh. It is also intended to assist communities affected by climate change induced displacement and their advocates to understand and utilize these processes to access new parcels of land in the country.

² Displacement Solutions has been engaged in efforts in various countries to procure land for climate displaced communities. A comprehensive overview of these efforts is outlined in *Land Solutions to Climate Displacement* (Scott Leckie, ed), Routledge, 2014.



These families face the prospect of being displaced by the effects of river erosion, as their home stands on the brink of the Gumti River, Photo Ezekiel Simperingham, Displacement Solutions

2. STATE-OWNED (*KHAS*) LAND IN BANGLADESH

The distribution of state-owned land – known as *Khas* land – to the landless poor has been a flagship of land reform in Bangladesh since independence. Indeed in one of the most densely populated countries in the world, where 160 million people are forced to live within 15 million hectares and where more than 40 million people are structurally landless, the more equal distribution of land and guarantees of fair HLP rights are essential steps towards the economic development of Bangladesh and the protection of human rights for all of its citizens.

The laws and policies for *Khas* land distribution have resulted in an estimated 142,073 families being allocated *Khas* land from 2009 to 2013. Regrettably, however, the history of *Khas* land distribution has been marred by corruption, mismanagement, overly complicated bureaucracy and a lack of political will to ensure that the landless poor who are in genuine need are the recipients of state-owned land. In fact, current estimates are that approximately 90 percent of agricultural *Khas* land is currently occupied not by the landless poor, but by political and business elites and their associates.³ Further, while there is a huge need for non-agricultural land for landless families and climate displaced persons, only agricultural *Khas* land is currently able to be distributed.

Despite these considerable problems, this Note seeks to show that with significant improvement, the *Khas* land distribution processes could provide important land-based solutions to climate displacement in Bangladesh. The framework of the system is sound and established. It is mostly in the implementation of the distribution process where corruption and vested interests arise and the system becomes prone to misuse and abuse.

There are currently at least 3.3 million acres of *Khas* land in Bangladesh.⁴ This land could and should form an essential part of the Government's response to climate displacement within the country. Given the escalating numbers of people being displaced by climate change across the country, there is an urgent need for the government to take early action to initiate a planning process using the *Khas* land distribution system to provide new land for the displaced.

³ Official sources claim that approximately 44 percent of the 803,308 acres of (identified) agricultural *Khas* land has already been distributed among the poor, landless and destitute. This statistic is questionable as at best 26 percent of agricultural *Khas* land has been distributed, the remainder is illegally occupied by rich and powerful people and their associates. Further, of the amount distributed so far, approximately 56 percent has not been able to be retained by landless people, who are pressured by local influential people to leave the land. As a result, only 11.5 percent of agricultural *Khas* land has been effectively occupied by those for whom the land is intended – the landless and poor, the remaining 88.5 percent is illegally occupied by political and business elites. See further: Barkat, A., Zaman, S. & Raihan, S.. *Distribution and Retention of Khas Land in Bangladesh*, Association for Land Reform and Development (ALRD), Dhaka, 2000.

⁴ This includes agricultural *Khas* land (0.8 million acres), non-agricultural *Khas* land (1.7 million acres) and water bodies (0.8 million acres). There are no definitive records of the total amount of *Khas* land in Bangladesh and it is claimed that this number could be far higher, as large tracts of *Khas* land are not identified in official land records, due to antiquated land records system and areas where *Khas* land has been deliberately concealed. See further: Barkat, A., Zaman, S. & Raihan, S.. *Distribution and Retention of Khas Land in Bangladesh*, Association for Land Reform and Development (ALRD), Dhaka, 2000.



These climate affected communities are searching for new houses and new lands after being affected by dramatic river erosion along the banks of the Meghna River, Photo Ezekiel Simperingham, Displacement Solutions

3. OVERVIEW OF THE *KHAS* LAND DISTRIBUTION PROCESS

This section of the Note provides an overview of the technical steps involved in the *Khas* land distribution process. It also identifies some of the key problems and concerns with the manner in which the process is implemented, and sets out some recommendations on how the process might be improved.

Overview

The 1984 Land Reform Ordinance, the 1990 Land Management Manual and the 1997 Agricultural *Khas* Land Management and Settlement Policy (including 1998 Amendment) provide the basis for current law and policy relating to the distribution of agricultural *Khas* land to landless persons in Bangladesh.

There are currently 11 steps that must be completed in order for an applicant to successfully receive agricultural *Khas* land. These are:

1. The Identification and verification of *Khas* Land;
2. Public announcement of *Khas* land availability;
3. Classification and subdivision of *Khas* land;
4. Call for applications for *Khas* land;
5. Selection of landless families for agricultural *Khas* land;
6. Plot distribution to successful landless families;
7. Preparation of case files for settlement;
8. The settlement of *Khas* land;
9. Registration of distributed *Khas* land;
10. Formal meeting for handover of the *Khas* land; and
11. Conditions of *Khas* land possession.



Climate Affected communities fleeing landslides are housed in a temporary tent city in Chittagong City, Photo Ezekiel Simperingham, Displacement Solutions

1. The Identification and verification of *Khas* Land

Technical Steps:

The first step in the process is for a local revenue collector (*Tahsildar*) to identify agricultural *Khas* land in their area of responsibility and to ascertain the status of that land. To do this, the *Tahsildar* collects local maps for all revenue villages (*Mauzas*), and physically identifies and verifies all identified *Khas* land in each village. The *Tahsildar* then submits a detailed report on all *Khas* land to another official, namely the *Upazilla* Revenue Officer (URO)/Assistant Commissioner-Land (AC-Land). The URO/AC-Land then compares the *Khas* land report with official records and physically verifies a selection of sample cases.

Key Problems/Concerns:

At present, only agricultural *Khas* land is available for landless persons in Bangladesh. It is essential that non-agricultural *Khas* land is also made available to landless and climate displaced persons.

Further, in practice, antiquated and incomplete land records hamper the identification of *Khas* land across Bangladesh. Land records are not digitized, facilitating the easy forging of records.

The process of identifying *Khas* land also depends on political will. As the will is often lacking, in many areas across the country where there is *Khas* land that could be identified and many landless persons in genuine need, the process of identification has not been initiated. While civil society may participate in the identification of land, including through providing volunteers for physical verification, there is no requirement that they or other independent voices be included in the process as safeguards against vested interests.

Recommendations:

- Non-agricultural *Khas* land should be made available for distribution to landless and climate displaced persons.
- Complete and accurate figures of the true amount of *Khas* land in Bangladesh should be provided. To this end, land records across the country should be updated and digitized in order to reduce the opportunities for forgery.
- The relevant law and policy should be amended to ensure that the process of identifying *Khas* land for distribution is triggered by genuine need rather than by political will. Accessible and accountable mechanisms should be established so that *Khas* land is made available to landless persons, including climate displaced persons, without interference from vested interests.
- The role of independent voices, including civil society, should be guaranteed as part of the *Khas* land identification process. This should include checking land records as well as physically verifying the land, to assess its suitability as well as to ensure that it is not being illegally occupied.

2. Public announcement of *Khas* land availability

Technical steps:

Once the URO/AC-Land has verified the availability of *Khas* land in their area of responsibility, they should publically announce that such land is available. This should be done in the form of a notice describing the land, which should be placed in various public offices, namely the *Upazilla Parishad* office; the URO/AC-Land office; police stations; *Tahashil* offices and the Office of the Sub-Registrar. A copy of the notice should also be shared with a number of other officials, including the Member of Parliament for the region; the Deputy Commissioner; the *Upazilla* Chairman; the *Upazilla Nirbahi* Officer; the Union *Parishad* (UP) Chairman and the Ward Commissioner.

The UP Chairman should then publicise the *Khas* land through the village guards (*Moholladars*) including the beating of drums in market places and places of public gathering throughout the concerned area. If there are any illegal occupants on the *Khas* land, the URO/AC-Land Office should file a legal case in the local court to evict such occupants on an emergency basis and in accordance with relevant legal processes.

Key Problems/Concerns:

In practice, persons in genuine need are not always made aware of the availability of *Khas* land. On the contrary, rather than being publically notified, such information is often reportedly passed on to family members and associates of the politically powerful. Further, it is clear that the requirement to evict illegal occupants is not taken seriously, as current estimates are that 90 percent of agricultural *Khas* land in the country is illegally occupied by business and political elites.

Recommendations

- Persons in genuine need must be fully and properly informed of the availability of *Khas* land. This can be better ensured by requiring that civil society be informed of the availability of *Khas* land alongside the numerous political actors currently informed. Civil society and other independent voices can ensure that the availability of *Khas* land is truly made public and that those in genuine need and living in remote locations are aware of and can apply for such land.
- It is essential that business and political elites who are not in genuine need and who are illegally occupying *Khas* land are issued with formal eviction notices to ensure that the land concerned can be accessed by those who are in genuine need and for whom the programme is designed to work. The relevant laws and policies to evict these illegal occupiers are already in place – what is required is genuine political will to ensure that the evictions are carried out.

3. Classification and subdivision of *Khas* land

Technical Steps:

Once available *Khas* land has been notified to the public, the land should then be categorized according to whether it is first,⁵ second⁶ or third class⁷ land. The land should then be subdivided into plots of 1 acre (first class), 1.5 acres (second class) and 2 acres (third class). Each landless family is then entitled to receive *Khas* land from any category to the maximum quantity of each subdivision, i.e 1 acre, 1.5 acres or 2 acres, depending on the class of the land.

Key Problems/Concerns:

In practice, it has been reported that the vast majority of persons who have received land under the *Khas* land distribution process have received less than 0.5 acres per family.

Recommendations

⁵ Triple-cropped with irrigation facilities.

⁶ Double-cropped with irrigation facilities.

⁷ Single-cropped, without irrigation facilities.

- Take steps to ensure that each landless family receives a plot of land in strict accordance with the existing policy, eg 1 acre of first class land, 1.5 acres of second class land or 2 acres of third class land.
- Make available non-agricultural *Khas* land to landless and climate displaced persons across Bangladesh.



Climate affected communities survey coastal erosion and the salinification of agricultural land on Sandwip Island, Photo Ezekiel Simperingham, Displacement Solutions

4. Call for applications for *Khas* land

Technical Steps:

Once the *Khas* land has been classified and subdivided, the District Commissioner (DC) should announce a call for applications from interested landless families alongside a schedule for the determination of such applications. The URO/AC-Land will then invite applications for *Khas* land from landless families. The notice announcing the call for applications should be placed in various Government offices, educational institutions and other public places, and other means of publicity in rural areas should also be undertaken. Eligible landless families include “landless families dependent on agriculture for their livelihood”, defined as families with neither homestead nor agricultural land; families that have a homestead, but no agricultural land and families that have both a homestead and agricultural land, but where the total amount of land is less than 0.5 acres.

Priority is given to destitute families of freedom fighters; families who have completely lost their land due to river erosion; a widowed or divorced woman with a son; families without a

homestead or agricultural land; families with 10 decimals (0.1 acres) of homestead land, but without agricultural land and families who became landless due to Government acquisition of their land. All applications for agricultural *Khas* land must be in a prescribed form (this form is attached as Appendix 1). The application form should include the following documents: three copies of a joint picture of the husband and wife for each family; a certificate from the respective Union *Parisad* Chairman describing the family as landless; a certificate of nationality from the respective Union *Parisad* Chairman; and a freedom fighter certificate where applicable.

One to two months should be allocated for the submission of applications by landless families. The AC-Land/URO will then receive each application personally and should provide an acknowledgement receipt for each application. The date and location for the selection meeting should be provided as part of the acknowledgment receipt. Applications are then verified by the AC-Land office with the assistance of the respective Union Land office.

Key Problems/Concerns:

There are a number of concerns with how the process for applying for *Khas* land works in practice. As with earlier elements of the procedure, the call for applications is often not made known to those genuinely in need. Further, the list of families and priority applicants is based not on vulnerability or need, but rather on the specific amount of land and status that each family holds. This leads to a wide margin of discretion when selecting landless families for *Khas* land, leading to reports that those most in need are often not the selected beneficiaries. Further, the categories deliberately exclude some vulnerable groups, for example, female headed households with no male sons. In addition, the *Khas* land distribution process makes no mention of climate displaced persons who have lost their homes, lands, property and livelihoods.

The application form is unnecessarily complicated and can act as a barrier to those persons who are illiterate. Further, the required supporting documents can be difficult and time-consuming to secure by landless and illiterate persons. The requirement that each application is received personally has also led to allegations that on occasion families are required to pay a bribe for their applications to be received. Where families have refused to pay such bribes, their applications have been marked “incomplete” and rejected.

Recommendations:

- Ensure that those genuinely in need are informed of the call for applications for *Khas* land. Require that civil society in addition to the District Commissioner and URO/AC-Land is involved in the publication and dissemination of every call for applications for *Khas* land to ensure that those who are in need are alerted.
- The definition of landless families and the definition of priority families should be centred on need and vulnerability. All vulnerable persons should be eligible to apply for such land, for example, female-headed households with no male children.

- Importantly, the definition and priority categories of recipients of *Khas* land should include climate displaced persons who have lost their homes and lands to the effects of climate change.
- The application form for *Khas* land should be simplified and made accessible to those persons who are illiterate or have received less formal education. The requirement for providing supporting documentation should be limited to those documents that are genuinely required. Assistance should be ensured to all persons seeking to apply for *Khas* land, both in completing the application form and in providing supporting documentation, by including civil society groups in the process.
- Corruption should be completely eliminated from every step of the *Khas* land distribution process. No person should be required to pay a bribe during the *Khas* land application process. Involving civil society and community leaders in the application process could play an important role in eliminating corruption.

5. Selection of landless families for agricultural *Khas* land

Technical Steps:

Once all applications have been received and accepted, the *Upazilla* Agricultural *Khas* Land Management and Settlement Committee should conduct a preliminary meeting. The Committee then visits each applicant's area and asks the applicants questions about their application. If the Committee is satisfied they will recommend the allocation of agricultural *Khas* land to the applicants, otherwise they will recommend cancellation of the application. After scrutiny of all of the applications, the Committee should prepare a final list of landless families selected for agricultural *Khas* land. This list should then be published in all respective *Upazilla* government offices and Union *Tahashil* offices. If any person disagrees with the decision of the Committee they will have the opportunity to appeal to the District Commissioner (DC) within 15 days of the notice being published. The DC should then appoint the Additional Deputy Commissioner (ADC) to investigate any complaints of corruption or dishonesty during the selection process. The ADC should undertake such investigation within seven days.

Key Problems:

Again, there are considerable concerns with the selection process for *Khas* land. The *Upazilla* Agricultural *Khas* Land Management and Settlement Committee clearly has considerable influence and power to accept or reject any application. It is essential that this Committee acts in a manner that is transparent and accountable. At present, there are numerous reports that successful applicants for *Khas* land are not those in genuine need, but those with political affiliations or connections in a given area. It is similarly imperative that appeals to the decision of the Committee should be dealt with in a just, transparent and accountable manner.

Recommendations

- The *Upazilla* Agricultural *Khas* Land Management and Settlement Committee should be required to include representatives from civil society and community leaders. These independent voices can act to ensure that decisions are taken on the basis of genuine need and not political or business connections.
- The decisions of the Committee should be made available and reasons for rejection should be communicated clearly to all rejected applicants. The Committee should be accountable to show that they have selected the persons in the greatest need.
- The appeal process should be clear, accessible and transparent. The ability to appeal against rejection should be based on clear information about the reasons for rejection, as well as the criteria against which the application was assessed. The ability to appeal a rejected decision should be assisted by civil society groups where possible.
- Any allegations of corruption or vested interest in the Committee's decision must be promptly, independently and impartially investigated. Such allegations are serious and impact on the credibility of the entire *Khas* land distribution process.

6. Plot distribution to successful landless families

Technical steps:

Once the landless families have been selected, those already living on the listed *Khas* land and those already living elsewhere in the *Mouza* are prioritized for *Khas* land distribution. Any further *Khas* land will be distributed to families living elsewhere in the respective Union or *Upazilla*. Members of landless associations, formed by nominated NGOs, government and autonomous associations are also be prioritised for *Khas* land distribution. The AC-Land office will then submit an application to the *Upazilla* Agricultural *Khas* Land Management and Settlement Committee with a case number for each file for approval. The Committee then publishes the list of selected landless peoples with a proposed plot number for *Khas* land allocation which should be displayed in the *Upazilla Parishad* notice board along with other public places. A report with the same information will also be sent to the District Commissioner. Any person may appeal the decision of the Committee within seven days of the notice being published. The decision of the DC is final for each respective appeal.

Key Problems:

A key concern with the distribution of plots of *Khas* land is that only those persons residing in the respective *Mouza*, Union or *Upazilla* are eligible to receive such land. There are clearly good reasons why available land should go to those persons who have links and ties to the community and area. However, by excluding landless persons from other areas, the system as a nationwide solution to landlessness and climate change induced displacement is less effective. (For example, Khulna, one of the areas most heavily affected by climate displacement, is also one of the areas with the least amount of *Khas* land available). Further, although landless associations are important to consolidate and promote the interests of this vulnerable class of

persons, members of such organisations should not be prioritized over others with greater need and vulnerabilities.

Again, the *Upazilla* Agricultural *Khas* Land Management and Settlement Committee has an essential role to approve each family and plot of land for distribution. The political dominance of the Committee should be balanced with independent voices, including representatives from civil society and community leaders.

The ability to appeal decisions made under the *Khas* land distribution process should be accessible, known and should be made promptly by an independent and impartial process.

Recommendations:

- *Khas* land should be made available to landless persons from outside the *Upazilla* in which that land is located. Only then will the *Khas* land distribution be able to function as a comprehensive and nationwide solution to landlessness and climate change induced displacement.
- Decisions on plots of land, and the selection of families, should be made on genuine need and vulnerabilities, rather than membership of landlessness associations.
- Independent voices, including representatives from civil society and community leaders must be included on the *Upazilla* Agricultural *Khas* Land Management and Settlement Committee. All decisions of the Committee must be transparent and based on clearly identified criteria.
- The appeal process for decisions made under the *Khas* land distribution process should be easily accessible to all persons. Decisions made should be transparent, based on clear criteria and should be made by independent and impartial decision makers.

7. Preparation of case files for settlement

Technical steps:

Once landless families have been selected and plots of land identified, the AC-Land/URO prepares *Khas* land settlement case files. Each case file will include the original application form, meeting minutes, a sketch map of the area and an order sheet. The AC-Land/URO sends the list of recommended landless families to the District Commissioner for final approval.

Key Problems:

The final approval by the District Commissioner should be based on well-established criteria and should be known to all applicants involved in the *Khas* land distribution process.

Recommendations:

- Where the DC does not accept a case file, the rejected family should be provided with clear reasons along with the criteria that decision was based on. It is essential that all steps of the *Khas* land distribution process are transparent and free from corruption.
- A landless family rejected by the DC should have the ability to appeal that decision, through an independent and impartial process.

8. The settlement of *Khas* land

Technical Steps:

Selected landless families are informed of their final selection by the *Upazilla* Agricultural *Khas* Land Management and Settlement Committee through an official letter and through a published notice. After receipt of the official letter, each landless family must deposit a nominal fee for their portion of the *Khas* land, and pay the revenue tax (*Khajna*) for the current year. Each landless family will then receive and complete the deed of agreement (*Kabuliat*) provided by the UNO office. The District Commissioner will then sign the *Kabuliat* on behalf of the Government. The signed *Kabuliat* will be registered in the registration office.

Each family receives the *Khas* land for a period of 99 years and they are not permitted to sell or otherwise pass on the land. The AC-Land/URO will then send the profile of the settled land and the selected landless family to the Sub-registry office. The Sub-registrar then opens a file with the names of the selected landless family with the distributed land. The DC sends the list of selected landless families to the Ministry of Land. The Ministry of Land will then send the list to different newspapers to publish the list of families receiving *Khas* land. Any person may appeal to the DC against the eligibility of the selected families within 30 days. Where such appeal is upheld, the settlement of such *Khas* land will be cancelled and legal proceedings against any relevant person will be initiated.

Key Problems:

Although only a nominal fee is required along with the required revenue tax, in practice it has been reported that families are required to pay bribes to secure plots of *Khas* land. Further, while there are clear reasons why families should not be able to sell or pass on their land within the terms of their 99 year lease, it is equally essential that all families receiving *Khas* land have legal security of tenure and are protected against eviction on that land. Where landless persons are awarded *Khas* land, their settlement is often disputed by business and political elites and they are subject to pressure and harassment to leave the land. Studies have revealed that on average only 47 percent of families have security of tenure over their plot of *Khas* land. Once the land has been distributed to beneficiary families, they should be free to use the land as they wish, free from harassment and intimidation from business and political elites who have been reported to require that the land be used for their benefit. As with any appeals as part of the *Khas* land distribution process, it is essential that the appeal process is transparent, just and undertaken by an independent and impartial process.

Recommendations:

- All corruption must be removed from the *Khas* land distribution process. No family should be required to pay a bribe to receive a plot of *Khas* land. Requiring the involvement of civil society and community leaders in the distribution process will help ensure against corruption.
- Security of tenure must be provided for all families receiving *Khas* land. They must be free from the threat of eviction and free from harassment by business and political elites.
- All beneficiaries should be free to choose how they use their agricultural *Khas* land. They should be free from intimidation and harassment to use the land in line with the wishes of the local business and political elite.

9. Registration of distributed *Khas* land

Technical Steps:

After receiving a copy of the deed of agreement (*Kabuliat*) form, the AC-Land/URO will prepare the final case file for each family and the land will be added to the formal register within 15 days. Each family and the relevant *Tahashildar* must be informed once the formal register has been amended. All approved case records are stored by the AC-Land/URO. They must preserve the records according to the serial number of each case file and will be responsible for any lost documents.

Key Problems:

As mentioned above, the antiquated and incomplete land register in Bangladesh lends itself to forgery, misuse and corruption.

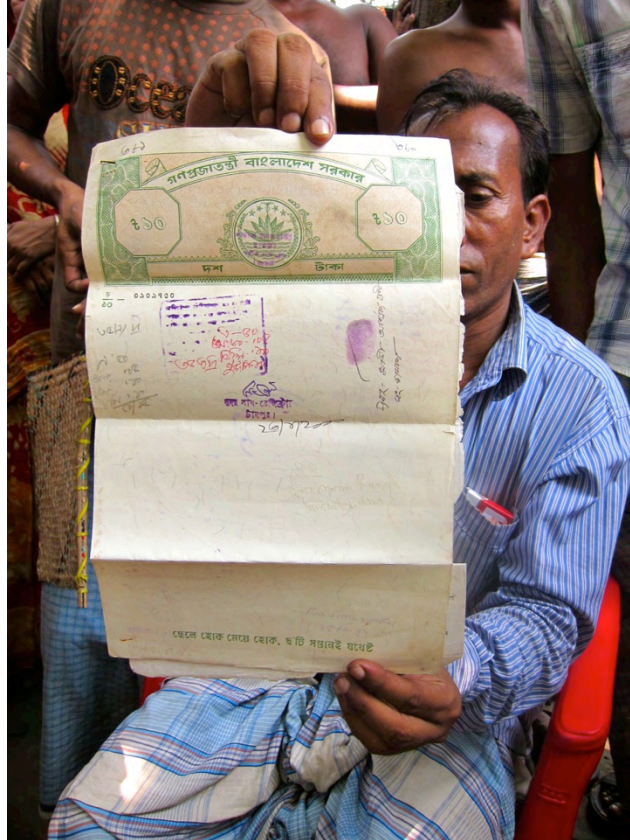
Recommendations:

- The land register in Bangladesh must be digitalized and updated. These are essential steps towards providing the true picture of *Khas* land in Bangladesh and protecting against forgery and illegal amendments of the register.

10. Formal meeting for handover of the *Khas* land

Technical Steps:

The *Khas* land document will be formally handed over by a chief guest, either the President of Bangladesh, or in his or her absence, Ministers of the Government, Members of Parliament, Divisional Commissioners, the District Commissioner or an *Upazilla* Chairman. Selected landless families will receive deeds of ownership for the land from the chief guest.



This climate displaced person displays his deed of ownership over Khas land that he has been allocated, photo Ezekiel Simperingham, Displacement Solutions

11. Conditions of Khas land possession

Technical Steps:

Khas land is distributed equally in the names of both the husband and wife of each family. If the husband and wife subsequently separate, the Government will cancel the *Khas* land settlement and the eldest son of the family will receive priority application for the next allotment of *Khas* land settlement. After obtaining possession of the *Khas* land, if the husband marries a new wife (with the permission of the first wife), the new wife will receive no rights of possession over the land. If the husband is found guilty of any violence against his wife, his rights of possession over the *Khas* land will be cancelled and his wife will retain full possession rights.

Key problems/concerns:

Although these steps appear to render a degree of gender equality over *Khas* land, some concerns remain. In particular, where a husband and wife separate, the requirement that the *Khas* land ownership is cancelled and the husband and the wife both lose rights over the land is problematic. This could lead to people, particularly women, remaining in abusive marriages against their wishes, for fear of losing the home and land on which they live. Further, the

priority rights will transfer to the eldest son, with no mention of rights for other children, including daughters.

Recommendations:

- Where a husband and wife separate, a mechanism should be in place for the family to retain possession over the *Khas* land. This would avoid husbands and especially wives feeling pressured to stay in potentially abusive relationships, simply from fear of losing their home or land.
- Where *Khas* land is cancelled, a mechanism should be in place for the children to have equal rights and priority over the next plot of *Khas* land, including equal rights between sons and daughters.

Additional concerns with the *Khas* land distribution process

In practice an application for *Khas* land takes a long period of time to be finalized. On average it is reported that an application can take 6-8 month to process. This delay, especially for those families who are landless and living in a vulnerable situation, can simply be too long. This has led to a number of families taking the decision to move to the urban slums of Dhaka and Chittagong, rather than wait for an application of *Khas* land – especially as the process is so well known to be rife with corruption and abuse.

In addition, the *Khas* land that is made available for distribution is often isolated and of low agricultural value. Another concern relates to the lack of formal support provided to families once they settle on new *Khas* land in order to render their settlement sustainable. Due to the isolated location and poor agricultural value of much *Khas* land, there is limited access to essential services such as healthcare and education, as well as limited opportunities to earn a living. In practice this means that a number of beneficiaries of *Khas* land leave the land to which they have been allocated and either return to their previous vulnerable position, or move to the urban slums of Bangladesh. There is an urgent need for social support such as access to education and healthcare, as well as training in new livelihoods, for families who have received *Khas* land.

Make available non-agricultural *Khas* land to all landless and climate displaced persons in Bangladesh.

Recommendations:

- The application time for *Khas* land distribution should be reduced where possible. While applicants must have sufficient time to prepare their applications, the entire process should be fast-tracked in order to move those living in vulnerable locations to areas of safety. Combined with an elimination of corruption and misuse, this will lead to more faith in the system and more applications from those families in genuine need.

- Illegal occupants of *Khas* land should be evicted and the land should be made available for those in genuine need. This will allow valuable *Khas* land to be opened up, whereby landless persons and climate displaced persons can be relocated and rehabilitated in a manner that provides a durable solution to their displacement.
- Adequate support should be provided to those who are provided with new *Khas* land in order to ensure that their settlement is sustainable. At a minimum this should include access to essential services such as education and healthcare, as well as livelihood training and support. Civil society groups and NGOs should be involved to assist in this process. An independent and impartial authority should hear concerns about the new *Khas* land sites, and where concerns are legitimate about the quality or maintenance of such sites, there should be an accountable mechanism to ensure that such sites are improved.
- The Government of Bangladesh should take steps to demonstrate its political commitment to improving the *Khas* land distribution process. These could include convening a special session of Parliament devoted to the identification, distribution and retention of *Khas* land and ensuring that all political parties clarify their position in relation to *Khas* land in their election manifestos.

BOX 1: The role of NGOs in the distribution of *Khas* land

The involvement of civil society and other independent voices in the *Khas* land distribution process is essential to eliminate corruption and reduce the influence of vested interests.

A number of civil society organisations and NGOs are already active in the *Khas* land distribution process, including The Association for Land Reform and Development (ALRD); UTTARAN; *Samata*; Bangladesh legal Aid and Services Trust (BLAST); *Nijera Kori*; and *Madaripur* Legal Aid Association.

NGOs can assist the land distribution process in a variety of ways, including:

- Volunteering to assist with the identification and physical verification of *Khas* land.
- Assisting in publicizing *Khas* land availability and the call for applications from landless families.
- Providing advice and legal aid to applicants to assist with the application process and collection of all required documentation.
- Undertaking ongoing monitoring and evaluation of *Khas* land distribution.
- Undertaking advocacy with local and national Government to improve the *Khas* land distribution process – especially to improve the implementation of the process and to reduce corruption, abuse and misuse.
- Ensuring the sustainability of communities living on *Khas* land, by assisting families who have received *Khas* land to access essential services such as healthcare and education, and providing livelihood training and support.

Currently civil society and NGOs only play a limited role in the *Khas* land distribution system. As recommended elsewhere in this Note, their involvement needs to be significantly strengthened in order to ensure that the system functions more effectively and to reduce corruption and abuse.



Representatives from Young Power in Social Action (YPSA) meet with Char Dwellers to discuss their concerns, Photo Ezekiel Simperingham, Displacement Solutions

4. INTRODUCTION TO THE PROCESS OF DISTRIBUTION OF *CHAR* LAND AND THE *CHAR* DEVELOPMENT AND SETTLEMENT PROJECT IN BANGLADESH

One part of the *Khas* land distribution system is implemented more effectively than the rest of the system, and provides some important lessons for how the broader system might be improved. This part is known as the “*Char* Development and Settlement Project” (CDSP).

The CDSP deals with state-owned land known as “*Char*” land, which falls into the broader category of *Khas* land, in South Eastern Bangladesh. The aim of the Project is to improve the security of tenure of landless people who are informally occupying *Char* land by providing them with legal title over the land, as well as to improve the quality of their lives on *Char* land by developing infrastructure and providing essential services such as healthcare, education and livelihood training.

As with the broader *Khas* distribution system, there are some areas of the CDSP that require improvement which are identified in this Note and for which recommendations are made. Nonetheless, what the CDSP does show is that it is entirely possible to implement improvements to the broader *Khas* land distribution system so that it benefits those in most genuine need and so that settlement on *Khas* land is sustainable.

5. CHAR LAND IN BANGLADESH

Bangladesh experiences dramatic erosion and accretion in the river systems every year. This leads to the emergence of islands in the form of sand bars as well as new land attached to the riverbanks. In Bangladesh these lands are known as *Char* lands. Formally these newly accreted lands become *Khas* land and the property of the State.⁸

Char land in Bangladesh can be found in five major areas: the Jamuna, the Ganges, the Padma, the Upper Meghna and the Lower Meghna rivers. The total area of *Char* land in these areas is approximately 175,000 hectares. For the tens of thousands of people who lose their homes and lands due to dramatic river erosion, these newly formed *Char* lands offer the best hope of finding new lands and building new homes and new livelihoods.

However, the majority of people living on *Char* lands do so out of desperation. Living conditions on the *Chars* are very harsh: the land is often inaccessible and can only be reached by boat or foot. The people living on the *Chars* lands are also exposed to severe natural hazards including regular flooding, storms, salinity intrusion and erosion. There is often little or no safe drinking water and often no system of communication or essential services, such as schools or healthcare. In the absence of adequate administrative structures, local power groups take control of the *Char* lands. Settlers, often from adjacent areas of the mainland occupy the *Char* land illegally, often with the acquiescence of local powerful people.

Despite the considerable challenges of living on *Char* lands, for many it is considered the only option – in the absence of available land on the mainland and the difficulties of securing suitable agricultural *Khas* land through the existing legal and policy mechanisms described above. In light of this, the Government of Bangladesh has implemented the “*Char* Development and Settlement Project” (CDSP). As noted above, the aim of the Project is to improve the security of tenure and living conditions of those living on *Char* land.

⁸ *Char* land is formally under control of the Forest Department (for a period of 20 years after the start of the first reforestation activities).

6. THE *CHAR* DEVELOPMENT AND SETTLEMENT PROJECT (CDSP)

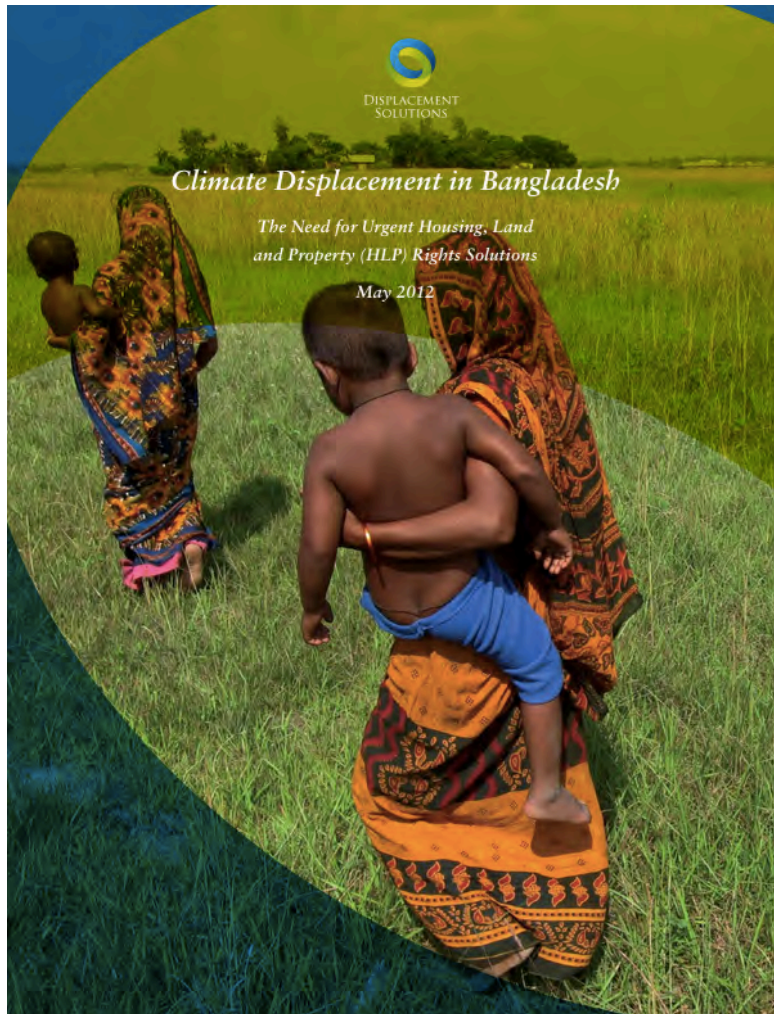
This section of the Note provides an overview of the technical steps involved in the CDSP distribution process and identifies some of the key problems and concerns with the manner in which the process is implemented, and sets out some recommendations on how the process might be improved. It also highlights the advantages of the CDSP that are currently missing from, and could be incorporated into, the broader *Khas* land distribution system.

The *Char* Development and Settlement Project (CDSP) was designed to improve the lives of persons living on *Char* lands. This includes providing legal title over the *Char* lands to families who have previously been living on the *Char* land on an informal or illegal or temporary basis. The Project also seeks to improve the living conditions of *Char* dwellers, including through reducing vulnerability to natural hazards – including water resource management, protection against tidal and storm surges and improving drainage capacity. The Project also builds infrastructure on the *Chars*, including cyclone shelters, roads, bridges and drinking water pumps.

The aim of the current phase of the CDSP (2011-2017) is to ensure 30,000 hectares of land to 28,000 households.

There are currently 3 steps that must be completed in order for an applicant to successfully receive *Char* land under the CDSP:

1. Production of a settlement map;
2. Issuance of the Official Land Title; and
3. Consolidation of the map and information on landless households.



These climate affected families are living on a Char in the Upper Jamuna River, Photo Ezekiel Simperingham, Displacement Solutions

Technical Steps:

1. Production of a settlement map

The first step of the CDSP process is the production of a settlement map. During a plot-to-plot survey (PTPS), cartographers measure each and every plot, drawing an exact map of the land by cadastral surveys and noting the details of the inhabitants of that land. The maps and information about the inhabitants are then deposited at the *Upazilla* Land Office. In the *Char* Development Settlement Project area, the results of the PTPS must be published by the *Upazilla* Land Office and appeals against the findings can be submitted within 30 days.

It is essential that the requirement to publically notify inhabitants of the PTPS is respected. Further, the opportunity to file a complaint against the findings of the PTPS must be based on clear criteria and be determined by an independent and impartial process. It is also essential that vulnerable inhabitants living on the land illegally are not at risk of eviction once their occupation is publically notified.

Problems/Concerns:

The process of undertaking the plot-to-plot survey can take a long time. This is understandable as the focus of the CDSP is on newly accreted *Char* lands that have not been surveyed before. However, this can leave those people living on the *Char* lands illegally, under the influence of local powerful people and hence, vulnerable.

Recommendations:

- i. Ensure that vulnerable inhabitants with unclear or illegal tenancy over the *Char* lands are not at risk of eviction once their habitation of that land is made public.
- ii. Ensure that all relevant person are made aware of the PTPS and those who wish to appeal against the findings have a reasonable basis on which to do so, and that the appeal decision is made by an independent and impartial process.
- iii. Where possible, take steps to expedite the process of surveying the *Char* land and producing a settlement map.

Technical Steps

2. Consolidation of the map and information on landless households

Once the plot-to-plot survey has been completed and the results have been published, a public CDSP hearing is held at the village level. During these hearings, each case is called out to confirm that the family and all listed members are living on the plot. During this process other participants can object, for example, if they know that the applicant owns a plot of land elsewhere. Once the hearing is completed, the list of identified landless households is transferred to the *Upazilla* Land Office, which prepares the official resolution of the meeting as well as the settlement record for every family. The deed of agreement (*Kabuliat*) must then be signed by the selected landless family and the land authority. The *Kabuliat* is then registered at the village level, due to a special arrangement, which saves the families time and costs for the often difficult travel to the *Upazilla* Land office.

Positives/Advantages

The holding of hearings and registration of the deed of agreement at the village rather than the regional and district level under the CDSP is a large improvement over the *Khas* land distribution system described above, as many of the vulnerable families who seek to benefit from the system lack the resources to travel the long distances required to the *Upazilla* office.

Problems/Concerns

It is clear that *Char* lands often lack adequate administrative structures and are under the influence of local powerful people. It is important that these people are not able to influence the process of *Char* land distribution and that the most vulnerable and in need are the true beneficiaries. It is essential that the ability of persons to object to the results of the PTPS during the village hearing is based on clear grounds and that any decision is made by an impartial and independent process.

Recommendations

- i. Ensure that any complaints against the results of the PTPS are heard by an independent and impartial process and that the grounds for such complaints are clearly known and identifiable.
- ii. Ensure that any decisions are on the basis of need and vulnerability, and not subject to the influence of local powerful people.

Technical Steps

3. Issuance of the Official Land Title

Once registered, the details of the settlement cases are entered in the land database of the CDSP. Digitalised final records of right (*Khatians*) are produced by the Land Records Management System and this document is handed over to the beneficiary family, making them the owner of the respective plot on a permanent basis, although the plot cannot be sold by the family. The Land Records Management System allows for the recording of every land attribution and helps the preservation of permanent records and prevents double assignments. In practice, the name of the wife is written first in the legal document, meaning that the wife is legally entitled to 50 percent of the total land. This is intended to strengthen her position in the family and provide her uninterrupted access to the land. If the husband should be found guilty of violence against his wife, or of involvement in illegal activities, a legal process may be initiated whereby he can lose his share of the land.

Positives/Advantages

The digitalization of the final records of right is a much improved process over the *Khas* land distribution process described above and lowers the risk of forgery of the official records. Further, ensuring that the wife and husband are equal owners also ensures a degree of gender equity.

Problems/Concerns

While there is greater gender equity under the CDSP, when contrasted to the *Khas* land distribution process, any disputes over ownership of the *Char* land in the event of a separation between the husband and wife need to be clarified and any adjudication needs to take place via

an independent and impartial process. The rights of children, including equal rights between sons and daughters, also need to be clarified.

Recommendations:

- i. Clarify the status of the land in the event of any separation of the husband and wife (not including in instances of violence or illegal activities), including the rights of any sons or daughters in the family.
- ii. Ensure that any ownership disputes in the case of separation of husband and wife are effectively adjudicated by an independent and impartial body.

Lessons from the CDSP process that could be applied to the *Khas* land distribution process

Overall, the CDSP is implemented in a more effective manner than general *Khas* land distribution. The active involvement of donor agencies and other independent voices helps to ensure that there is less opportunity for corruption and abuse in the process. Women's rights to land are better protected under the *Char* system. The system also recognizes that broader support than just legal title over the land is required in order for communities to be able to live and work on the land – as evidenced by the livelihood training and infrastructure development which is carried out on the *Char* lands. Other small details of the *Char* system, like the holding of hearings at village rather than *Upazilla* level, are also important when most of the beneficiaries of the system are vulnerable persons without the means to travel long distances.

However, despite its advantages, the CDSP cannot provide a solution for nationwide landlessness and climate change induced displacement. At present it is limited to the South East of Bangladesh and more than 80 per cent of beneficiaries are the victims of land erosion from adjacent areas of the mainland. Moreover, *Char* land is highly unstable and would not be a desirable location for the permanent settlement of landless and climate displaced persons from elsewhere in Bangladesh. Despite the efforts to improve them, conditions on *Char* lands remain very harsh, and lead to a sense of isolation and hopelessness for many living there. Further, the vast majority of CDSP beneficiaries – if not all – already reside on the *Char* land. Whilst it is admirable that the CDSP seeks to improve the security of tenure for persons with vulnerable status, it excludes those people that do not have the means – or the connections – to be able to access and live on *Char* land.

While the CDSP may not provide a nationwide solution, the system still shows that security of tenure can be provided for landless and climate displaced persons in Bangladesh, and that support can be provided to persons living in vulnerable and isolated situations, including transport and communication infrastructure, healthcare and education. The approach adopted under the CDSP should similarly be applied to the 3.3 million acres of *Khas* land formally available to the Government on the mainland of Bangladesh.

7. CONCLUSION

The challenge of climate displacement is escalating in Bangladesh and elsewhere around the world. Land lies at the core of any approach to resolving climate displacement – and the need to ensure land for the current and future millions of climate displaced persons needs to be acted on now. Governments everywhere need to urgently start planning to ensure that they will be able to provide the right institutions, policies, laws and level of resources to address the housing and land dimensions of climate displacement.

Unlike many countries facing climate displacement, Bangladesh already has a system in place to distribute state-owned land to landless people. While the implementation of these laws and policies is far from perfect, with a number of key improvements, the state-owned land distribution processes in Bangladesh could provide an important component of more comprehensive solutions to finding new homes and land for those displaced by the effects of climate change. The system in Bangladesh could also provide a potentially useful model and interesting example for other countries to consider in formulating their own approach to land solutions to climate displacement.

There are at least 3.3 million acres of *Khas* land in Bangladesh. This land should be made formally available for the Government to distribute to landless and climate displaced persons. Whilst there are sufficient laws and policies in place to distribute agricultural *Khas* land, these laws and policies should be extended to include non-agricultural *Khas* lands. Further, what is severely lacking is genuine political will to ensure that those lands go to persons in need, rather than those with political and business connections.

The *Char* Development and Settlement Project, although limited in scope, has a number of positive features and provides some important lessons that can and should be applied to the 3.3 million acres of *Khas* land. These include the need to ensure genuine security of tenure through the provision of legal title to the land rather than a long-term lease; to make the process accessible to vulnerable persons in genuine need of land rather than those with political or business connections; to ensure better gender equity by providing women and female children with stronger rights to *Khas* land; to provide broader support to ensure the long-term sustainability of *Khas* land settlements, including access to basic services such as healthcare and education, transport and communication infrastructure and livelihood training; and to strengthen the involvement of civil society and community groups in the process to ensure greater transparency and accountability, as well as to provide assistance and support to those involved in the process.

Significantly improving the *Khas* land distribution process would enable the Government to address the challenge of escalating climate displacement in Bangladesh by providing the land needed to house the current and future millions of climate displaced persons across the country.

